

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE

PLANT SERVICES DIVISION

PREAMBLE

1. **Sections Affected**

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R3-4-212	Repeal
R3-4-213	Repeal
R3-4-214	Repeal
R3-4-215	Repeal
R3-4-216	Repeal
R3-4-217	Repeal
R3-4-227	Repeal
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
 Authorizing statute: A.R.S. § 3-107
 Implementing statutes: A.R.S. §§ 3-201.01 and 3-205.01
3. **Effective Date of the Rule:**
 April 3, 1997
4. **A list of all previous notices appearing in the Register addressing the final rule:**
 Notice of Rulemaking Docket Opening:
 2 A.A.R. 4297, October 18, 1996
 Notice of Proposed Rulemaking:
 3 A.A.R. 174, January 17, 1997
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
 Name: Shirley Conard, Rules Specialist
 Address: Department of Agriculture
 1688 West Adams, Room 124
 Phoenix, Arizona 85007
 Telephone: (602) 542-0962
 Fax: (602) 542-5420
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
R3-4-212. Dudaim Melon suppression. This rule establishes that the Dudaim Melon is a noxious weed that is dangerous to Arizona's agriculture industry.
R3-4-213. Dudaim Melon suppression -- area subject to regulation. This rule specifies the area under quarantine.
R3-4-214. Dudaim Melon suppression -- commodities covered. This rule lists the commodities or items that may be contaminated with the pest and which the Department will regulate and inspect.
R3-4-215. Movement of host plants and carriers within Arizona. This rule regulates the activity of commodities and sets up the inspection of those commodities.
R3-2-216. Ginning of cotton. This rule sets up the requirements for the ginning and removal of cotton from infested areas.
R3-2-217. Practices which shall be followed in the growing of a crop on land infested with Dudaim Melon. This rule establishes

Arizona Administrative Register
Notices of Final Rulemaking

landowner requirements when dealing with Dudaim Melon.

When the Department promulgated the noxious weed rules in July 1995, the information in R3-4-212, R3-4-213, R3-4-214, R3-4-215, R3-4-216, and R3-4-217 was transferred into the new rule package. These rules pertaining to the Dudaim Melon should have been repealed at that time.

R3-4-227. Khapra Beetle. This rule was based upon federal Domestic Quarantine No. 76 which has since been repealed. There are no Khapra Beetle outbreaks in the United States and therefore no threat to Arizona agriculture.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
8. The summary of the economic, small business and consumer impact:
- A. *Estimated Costs and Benefits to the Arizona Department of Agriculture.*
This rulemaking will have no impact upon the department, other than it will remove obsolete rules from the Title 3, Arizona Administrative Code.
 - B. *Estimated Costs and Benefits to Political Subdivisions.*
Political subdivisions of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.
 - C. *Businesses Directly Affected By the Rulemaking.*
The repeal of these rules will have no impact upon any business.
 - D. *Estimated Costs and Benefits to Private and Public Employment.*
Private and public employment of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.
 - E. *Estimated Costs and Benefits to Consumers and the Public.*
Consumers and the public are not directly affected by changes of this proposed rulemaking.
 - F. *Estimated Costs and Benefits to State Revenues.*
This rulemaking will have no impact on state revenues.
9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
None
10. A summary of the principal comments and the agency response to them:
None
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
None
12. Incorporations by reference and their location in the rules:
None.
13. Was this rule previously adopted as an emergency rule?
No
14. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section	
R3-4-212.	Dudaim-Melon Suppression
R3-4-213.	Dudaim-Melon Suppression—Area Subject to Regulation
R3-4-214.	Dudaim-Melon Suppression—Commodities Covered
R3-4-215.	Movement of Host Plants and Carriers Within Arizona
R3-4-216.	Ginning of Cotton
R3-4-217.	Practices Which Shall Be Followed in the Growing of a Crop on Land Infested with Dudaim Melon
R3-4-227.	Khapra Beetle

ARTICLE 2. QUARANTINE

R3-4-212. Dudaim-Melon Suppression

The Dudaim Melon, *Cucumis melo* L. var *dudaim* Naud., is a dangerous weed pest of cotton and other crops in Arizona and constitutes a threat and menace to the agriculture industry of Arizona due to the weed's ability to limit harvesting and reduce the grade of the harvest, resulting in a large economic loss.

R3-4-213. Dudaim-Melon Suppression—Area Subject to Regulation

The provisions of R3-4-213 through R3-4-217 shall govern all fields found to be infested with Dudaim Melon or contaminated with infested hosts or carriers in the state of Arizona or any other infested state.

Arizona Administrative Register
Notices of Final Rulemaking

R3-4-214. Dudaim Melon Suppression—Commodities Covered

The following articles are designated as host plants and carriers of Dudaim Melon: cotton (all parts), other crops, gin trash, harvesting machines used on crops infested with dudaim Melon, soil from ground infested with Dudaim Melon, other materials, products and equipment which are contaminated with any of the above host plants and carriers, which, in the opinion of the inspector, present a hazard in the spread of Dudaim Melon.

R3-4-215. Movement of Host Plants and Carriers Within Arizona

No host plants and carriers produced in or concentrated within the area infested with Dudaim Melon may be moved to non-infested areas unless a permit is issued by the State Entomologist. All equipment used in the infested area shall be cleaned by the landowner or his representative of soil and debris to such a degree that it is free of Dudaim Melon seeds before this equipment is moved from the infested fields. All equipment shall be inspected within two working days by an inspector of the Arizona Commission of Agriculture and Horticulture after a request for such an inspection. It is the responsibility of the landowner or his representative to notify the Commission at least 48 hours in advance of his intention to move said equipment. Under no circumstances shall said equipment be moved without inspection to non-infested area.

R3-4-216. Ginning of Cotton

- A. All cotton from infested areas shall be ginned separately.
- B. All gin trash from the ginning of cotton from infested areas shall be segregated. Daily the segregated gin trash shall be brought to a landfill, under the supervision of an inspector and buried to the depth of six feet.
- C. After completion of ginning cotton from infested areas, the gin shall be inspected by an inspector of the Commission and must be free of Dudaim Melon and seeds prior to the ginning of any other cotton.

R3-4-217. Practices which shall be followed in the growing of a crop on land infested with Dudaim Melon

- A. Control program: It is the responsibility of the landowner or his representative to make repeated and timely herbicide applications to any Dudaim Melon infested area tilled by him, including area within the crop, ditchbanks and roadsides using the herbicide Glyphosate or Oxyfluorfen or a herbicide registered by the U.S. Environmental Protection Agency for the use on cotton which the Arizona State Entomologist has determined to be effective for the control of Dudaim Melon based on scientific research data, as indicated in a list on file with the Secretary of State.
- B. Picking and removing fruit of Dudaim Melon: The landowner or his representative is responsible for picking and disposal of fruit of Dudaim Melon from his infested fields. These fruits are to be transported to nearby landfill, or other authorized site, and buried to a depth of six feet. Both operations are to be carried out under the supervision of the Arizona Commission of Agriculture and Horticulture.

R3-4-227. Khapra beetle

- A. Notice of quarantine: It has been determined that Khapra beetle, *Trogoderma granarium*, Everts, is a dangerous pest not known to occur in the state of Arizona, that the pest is a serious pest to stored products, that the United States Department of Agriculture maintains a quarantine prohibiting infested articles from entering the state of Arizona. In order to prevent the spread of this pest in the event that it should be discovered in the state of Arizona, it is hereby ordered and declared that the

transporting of quarantined articles within the state of Arizona shall be covered by the following regulation:

- B. Pest: Khapra beetle, *Trogoderma granarium*, Everts.
- C. Area of Quarantine: Regulated area: Any mill, warehouse, seed store, bag company, feed store, feed lot, farm storage or any other property, together with the premises and any surrounding environs designated as regulated area in the administrative instructions issued under United States Department of Agriculture Domestic Quarantine No. 76, such premise to become part of the regulated area under this quarantine regulation, effective upon written notice to the owner or owners by the Entomologist.
- E. Commodities covered:
 - 1. All grains and grain products (including, but not limited to, barley, corn, oats, rye and wheat) whether moved as such or in connection with other articles.
 - 2. Dried seeds and seed products of field and vegetable crops (including, but not limited to, alfalfa seed, cotton seed, cottonseed meal and cake, flax seed, sorghum seed, soybean meal, pinto beans, and black-eyed peas).
 - 3. Bags and bagging (including, but not limited to, those made of burlap or cotton).
 - 4. Dried milk, dried blood, fish meal and meat scraps.
 - 5. Any other article which by reason of infestation or exposure is determined by an inspector to constitute a hazard of spreading the Khapra beetle.
- E. Restrictions:
 - 1. Movement of regulated articles: Regulated articles may be moved from the regulated area only when such articles are accompanied by a valid certificate or limited permit, as provided under United States Department of Agriculture Domestic Quarantine No. 76. Certificates authorizing the movement of regulated articles under this rule may be issued under the following conditions:
 - a. Certificates:
 - i. When, in the judgment of the inspector, they have not been exposed to infestation.
 - ii. When they have been examined by the inspector and found to be free of infestation.
 - iii. When they have been treated under the observation of an inspector and in accordance with a method selected by him.
 - b. Limited permits: Limited permits may be issued for the movement from the regulated area of non-certified regulated articles under such conditions and to such destination as may be authorized by an inspector for processing or other safe handling.
 - c. Certificates issued under (E)(1)(a)(ii) will be issued only on regulated articles the quantity and nature of which, in the judgment of the inspector, can be adequately inspected and the presence or absence of Khapra beetle accurately determined.
 - d. Any person intending to move from the regulated area any regulated articles, the certification of which is required, shall request inspection and certification as far as possible in advance of the probable date of such movement and he may be required to prepare and assemble the articles to be inspected or treated so they can be readily examined or inspected by the inspector.
 - e. Certificates or limited permits for any regulated article issued under these rules may be withdrawn or cancelled and further certificates or permits for such articles refused by the inspector whenever it is determined that further use of such certificates or permits may result in the dissemination of Khapra beetle.

Notices of Final Rulemaking

2. Disinfecting vehicles, machinery, and other articles:

- a. When an inspector determines that any railway, car, truck, or other vehicle, machinery, implement, or other article moving or to be moved from the regulated area, by reason of infestation or exposure, constitutes a hazard of spreading the Khapra beetle, such article shall be required as a condition of further movement to any point outside the regulated area to be thoroughly cleaned, disinfected, or otherwise treated under the observation of an inspector and in accordance with procedures authorized under United States Department of Agriculture Domestic Quarantine No. 76, or in supplements to this rule.
- b. In the event the owner, owners, or management of the property listed as regulated area fail to take such measures as are recommended by the State Entomologist in accordance with the provision of the United States Department of Agriculture Domestic Quarantine No. 76, and the establishment becomes so heavily infested as to constitute a menace to other properties and products, the State Entomologist

may, in accordance with the provisions of Title 3, Chapter 2, Article 1, Arizona Revised Statutes, quarantine the premises and prohibit the movement of any materials until the nuisance has been abated. In the event that the owner, owners or management fail to abate the nuisance, the State Entomologist may take such measures as may be deemed necessary and practical.

- c. All cost of control, suppression, eradication or preventive measures shall be borne by the owners of the regulated establishment, except in event state or federal funds are allocated to defray a proportionate part of the expense incurred by application of the above measures.
- F. Disposition of violations: Any shipment of lot of quarantined articles as herein defined arriving in Arizona in violation of this quarantine shall be immediately sent out of the state or destroyed at the option and expense of the owner or owners, his or their responsible agents, and under the direction of the Entomologist or his inspectors.
- G. Treatments: The approved treatments and procedures for use under the provisions of this rule for the movement of regulated articles from infested premises, and for the treatment of infested premises for removal from quarantine, shall be the same as listed in the United States Department of Agriculture Domestic Quarantine No. 76, or in supplements to this rule.
- H. General rules: See "General Rules and Definitions, Article 1".

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

- | 1. Sections Affected | Rulemaking Action |
|----------------------|-------------------|
| R20-5-601 | Amend |
| R20-5-602 | Amend |
| R20-5-603 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
 Authorizing statute: A.R.S. § 23-405(4)
 Implementing statute: A.R.S. § 23-410
 - 3. The effective date of the rules:
 April 1, 1997
 - 4. A list of all previous notices appearing in the Register addressing the final rule:
 Notice of Rulemaking Docket Opening:
 2 A.A.R. 4736, November 22, 1996
 Notice of Proposed Rulemaking:
 2 A.A.R. 5020, December 20, 1996
 - 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
 Name: Cathy Neville, Assistant Director
 Address: Industrial Commission of Arizona
 Division of Occupational Safety and Health
 800 West Washington Street
 Phoenix, Arizona 85007
 Telephone: (602) 542-1695
 Fax: (602) 542-1614

Arizona Administrative Register
Notices of Final Rulemaking

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

R20-5-601 requires change to incorporate amendments to a number of various sections of the construction standards as published in 61 FR 9228-9255, March 7, 1996; amendments for the consolidation of repetitive provisions as published in 61 FR 31427-31434, June 20, 1996; amendments for the incorporation of general industry health and safety standards applicable to construction work as published in 61 FR 41738, August 12, 1996; amendments for occupational exposure to asbestos, tremolite, anthophyllite, and actinolite as published in 61 FR 43454-43459, August 23, 1996; and amendments to the safety standards for scaffolds used in the construction industry as published in 61 FR 46026-46131, August 30, 1996.

R20-5-602 requires change to incorporate amendments to a number of various sections of the general industry standards as published in 61 FR 9228-9255, March 7, 1996; amendments to the standards for grain handling facilities for general industry as published in 61 FR 9578-9584, March 8, 1996; amendments pertaining to personal protective equipment for general industry as published in 61 FR 19547-19548, May 23, 1996, and 61 FR 21228, May 9, 1996; and amendments for occupational exposure to asbestos, tremolite, anthophyllite, and actinolite as published in 61 FR 43454-43459, August 23, 1996.

R20-5-603 requires change to incorporation amendments to a number of various sections of the agriculture standards as published in 61 FR 9228-9255, March 7, 1996.

Under its approved state program enforcing the Occupational Safety and Health Act, the state of Arizona must adopt standards that are at least as effective as those adopted by the U.S. Department of Labor. Therefore, the Industrial Commission updates its occupational safety and health standards by adopting by reference the most current and applicable federal occupational safety and health standards for the construction and general industry.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

8. **The summary of the economic, small business, and consumer impact:**

The federal Occupational Safety and Health Administration has determined that these amendments will have minimal to modest impact for most affected industry groups and has determined the amendments to be economically feasible. Cost and benefit analysis of these amendments is available for inspection, review, and copying at the Industrial Commission of Arizona, Division of Occupational Safety and Health, 800 West Washington Street, Phoenix, Arizona 85007.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

None

10. **A summary of the principal comments and the agency response to them:**

No comments, either oral or written, were submitted.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None.

12. **Incorporations by reference and their locations in the rules:**

29 CFR 1926, *Federal Occupational Safety and Health Standards for the Construction Industry*, with amendments as of August 30, 1996. This incorporation by reference appears in A.A.C. R20-5-601.

29 CFR 1910, *Federal Occupational Safety and Health Standards for General Industry*, with amendments as of August 23. This incorporation by reference appears in A.A.C. R20-5-602.

29 CFR 1928, *Federal Occupational Safety and Health Standards for Agriculture*, with amendments as of March 7, 1996. This incorporation by reference appears in A.A.C. R20-5-603.

13. **Was this rule previously adopted as an emergency rule?**

No.

14. **The full text of the rules follows:**

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH
CONSTRUCTION STANDARDS**

Section	
R20-5-601.	The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926
R20-5-602.	The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910
R20-5-603.	The Federal Occupational Safety and Health Standards for Agriculture, 29, CFR 1928

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH
CONSTRUCTION STANDARDS**

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

Each employer shall comply with the standards enumerated in the federal Occupational Safety and Health Standards for Construction, as published in 29 CFR 1926, with amendments as of August 23, 1996. ~~September 29, 1995~~, incorporated by reference and on file with the Office of the Secretary of State. Copies of these referenced material are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government

Arizona Administrative Register
Notices of Final Rulemaking

Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after August 30, 1996 September 29, 1995.

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

- A. Each employer shall comply with the standards in Subparts C through Z inclusive of the federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of August 23, 1996 October 11, 1995, incorporated by reference and on file with the Office of Secretary of State. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after August 23, 1996 October 11,

1995.

- B. No change.
- C. No change.
- D. No change.

R20-5-603. The Federal Occupational Safety and Health Standards for Agriculture, 29 CFR 1928

Each employer pursuant to A.R.S. § 23-403(B) shall comply with the standards enumerated in Subparts A through D inclusive of the Federal Occupational Safety and Health Standards for Agriculture, as published in 29 CFR 1928, with amendments up to and including (but not including any later amendments or editions) October 12, 1994 as of March 7, 1996, incorporated herein by reference and on file with the Office of the Secretary of State. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. This incorporation by reference does not include amendments or editions to 29 CFR 1928 published after March 7, 1996.